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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN RAY DYNES,

Defendant and Appellant.

F071058

(Super. Ct. Nos. F13907336,
F14902059)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Arlan L. Harrell, Judge.

Charles M. Bonneau, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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*Before Gomes, Acting P.J., Poochigian, J. and Peña, J.

John Ray Dynes appeals from the trial court’s denial of his petition for recall of his sentence and resentencing pursuant to the provisions of Proposition 47. The trial court determined Dynes was ineligible for relief as his convictions did not fall within the provisions of Proposition 47. We affirm the order denying the petition.

FACTUAL AND PROCEDURAL SUMMARY

Dynes’s petition appears to incorporate his conviction in two separate cases from Fresno Superior Court: F13907336 and F14902059. In case No. F13907336, the minute order from the sentencing hearing indicates Dynes pled no contest to one count of robbery (Pen. Code, § 211),¹ admitted a prior conviction constituting a strike within the meaning of section 667, subdivisions (b)-(i), and admitted he served three prior prison terms within the meaning of section 667.5, subdivision (b). He was sentenced to a prison term of seven years.

On the same date, Dynes entered a plea and was sentenced in case No. F14902059. In this case he pled guilty to carrying a concealed dirk or dagger (§ 21310) and was sentenced to one year four months in prison, consecutive to the sentence in case No. F13907336. Both pleas appear to be the result of plea agreements.

On November 14, 2014, Dynes filed a petition pursuant to section 1170.18, subdivision (a) purporting to petition for recall of his sentence and resentencing in both cases. The trial court denied both petitions, finding Dynes was ineligible for relief as his convictions did not qualify under the pertinent statutes.

DISCUSSION

On November 4, 2014, voters enacted Proposition 47. “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors.” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) “Proposition

¹All statutory references are to the Penal Code.

47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47 may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Id.* at p. 1092.)

Dynes’s convictions were not drug-related offenses, therefore we will limit our discussion to the changes made to the Penal Code. Proposition 47 added or amended the following Penal Code provisions: 459.5 (shoplifting), 473 (forgery), 476a (bad checks), 490.2 (petty theft of property valued under \$950), 496 (receiving stolen property valued at under \$950), and 666 (petty theft with a prior). To be eligible for relief, Dynes would have to have been convicted of one of these offenses. He was not. Accordingly, the trial court properly denied his petition in both cases.

Consistent with our analysis, appellate counsel filed a brief stating that after reviewing the record he did not identify any arguable issues. By letter dated June 9, 2015, we invited Dynes to inform this court of any issues he wished addressed.

In his response to our invitation, Dynes makes several requests/arguments. First, he requests we review the video of his robbery conviction to determine if a robbery actually occurred. This request is beyond the scope of review on this petition because it appears he entered a plea to the robbery count and he may not dispute the facts underlying the conviction. “A guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.]” (*In re Chavez* (2003) 30 Cal.4th 643, 649.)

Next, Dynes asserts his prior convictions (not those identified in this petition) fall within the parameters of Proposition 47, and he apparently requests some type of relief. Once again, this request is outside of the scope of the review from this petition. Section

1170.18 explains the procedure to be followed if seeking relief for a prior conviction for which the defendant is no longer in prison.²

In addition, Dynes asks that appellate counsel be retained for some unspecified purpose. Appellate counsel was retained for the purposes of this appeal, and for no other purpose. Dynes may directly contact appellate counsel if he has any further questions.

Finally, in his notice of appeal Dynes appears to make two arguments related to his three section 667.5 prior prison term sentence enhancements. First, he asserts that use of his prior prison term violates his constitutional right to be free from double jeopardy. Not only is this issue outside the scope of review for this petition, this argument has been repeatedly rejected. (See, e.g., *People v. White Eagle* (1996) 48 Cal.App.4th 1511, 1519-1520.)

Second, Dynes appears to argue that the crime for which he served a prior prison term should be reduced to a misdemeanor pursuant to the provisions of Proposition 47. Once again, this question is beyond the scope of review for this petition, and the record in this case precludes review of this issue even if it was properly before us, which it is not.

DISPOSITION

The order denying the petition is affirmed.

²Dynes also requests we contact his public defender for some or all of these prior convictions. This request is also outside the scope of the review in this case.